

MEMORANDUM

To: Cameron Clapper, City Manager

From: Wally McDonell, Whitewater City Attorney
Chris Munz-Pritchard, Neighborhood Services Director

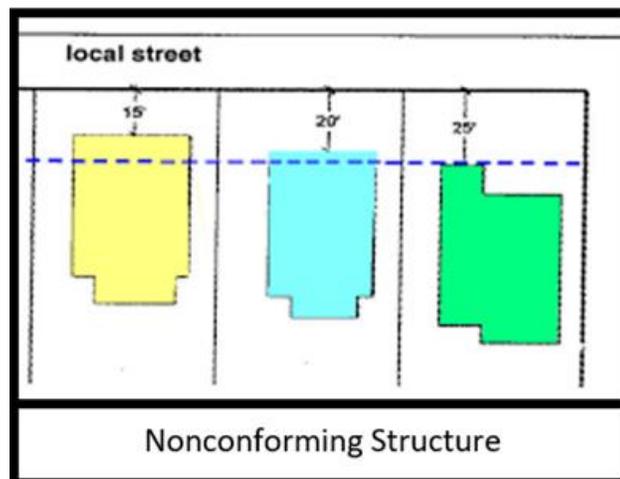
Date: March 22, 2019

Re: Nonconforming Lot, Use, and Structures amendment to zoning ordinance chapter 19.09 and 19.60.

The City is updating the Nonconforming Lot, Use, and Structures ordinance in chapter 19.09 and 19.60. The current language does not comply with state laws. It is important to note that this amendment is not a significant change of the substantive law related to nonconforming uses/structures, rather an update with some minor substantive changes. To help clarify the zoning ordinance I have provided definitions, diagrams and examples.

There are three types of nonconforming when discussing planning and zoning. There is the nonconforming lot, nonconforming structure, and the nonconforming use. There is a distinction between the nonconforming use of a structure and a nonconforming structure or nonconforming lot that is nonconforming for reasons of size or location.

A **nonconforming structure** is a structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning and/or development regulations, no longer fully complies with those regulations. The example below shows two homes that are built over the setback line.

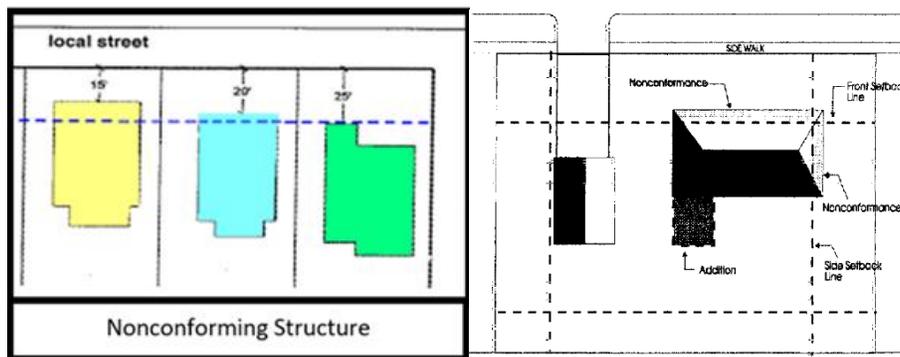


A **nonconforming use** is a use of property that was allowed under the zoning regulations at the time the use was established but which, because of subsequent changes in those regulations, is no longer a permitted use. The example below shows a yellow residential home, in a commercial area.



The legislature adopted an overall policy goal to eliminate nonconforming uses by restricting the repair of the structures that are part of the nonconforming use. The zoning statute limited the amount of money that could be spent on maintenance and repair of structures used for nonconforming uses to 50 percent of the assessed value of the structure housing the use. This would apply to the yellow residential home, in a commercial zoning district (above).

Nonconforming Structures with a conforming use may be repaired, maintained, renovated, rebuilt, or remodeled, subject to building code and other applicable requirements. No prohibition or limits based on cost may be imposed on the repair, maintenance, renovation, or remodeling of such structures (19.60.020 B).

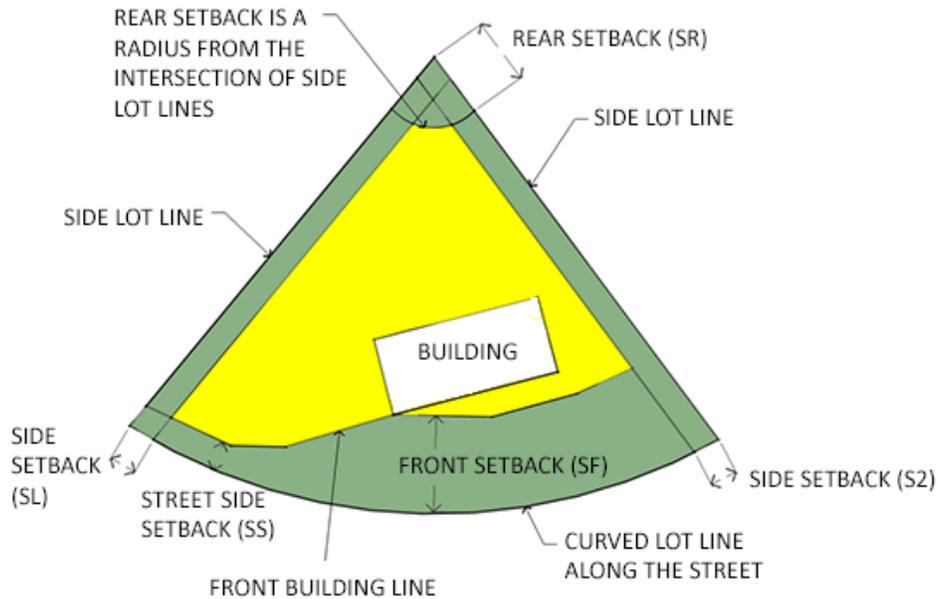


So for example, the yellow or blue home above, are nonconforming structures (built over the setback line), but a conforming use (the zoning district is residential). This is a nonconforming structure, with a conforming use and there for the 50 percent rule does not apply. Both the yellow and blue homes above, can update the kitchen, bathroom and so on as long as the home improvements meet all other codes, ordinances and regulations. Both homes could for example put an addition on the rear of the residence (example above) as long as the addition meets all other regulations.

A **nonconforming lot** is one that, at the time of its establishment, met the minimum lots size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, is now smaller than that minimum lot size.

Additions, Enlargements and improvements to such structures are permitted provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements.

In other words with the addition or enlargement of the structure on a nonconforming lot, all additions would need to fit in the building envelope or buildable area and meet all other requirements. A building envelope (building area, in yellow below) is an area of land within a lot outside of which building development is not permitted.



The purpose of zoning is “to promote the health, safety, morals, and general welfare of the community, to protect and conserve the value of buildings, and encourage the most appropriate use of the land.”